STATEMENT of JOSE R. PADILLA
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BEFORE
THE

CONGRESSIONAL HOUSE OF REPRESENTATIVES
SUBCOMMITTEE
ON
COMMERCIAL AND ADMINISTRATIVE LAW

March 31, 2004

The Honorable Chris Cannon
Chairman, Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
Washington, D.C.

RE: **OVERSIGHT HEARING ON LEGAL SERVICES**

I. INTRODUCTION

It is a distinct honor to submit testimony on behalf of the organization I have now directed for almost 20 years. This hearing presents inopportunity to make people aware of the work CRLA performs serving the legal needs of the poor. It is also an opportunity to speak on behalf of the almost 555,000 rural poor persons and more than 463,000 farm workers and dependents who are the client constituents of CRLA. Their poverty status and the challenges facing them makes evident the need for CRLA's daily presence in rural communities of California.

CRLA has a proud legacy of effective, ethical and high-quality representation on behalf of its rural clients, and adopts as a core value the democratic principle that the poor deserve legal representation as much as those economically better off. In recent examples, CRLA:

- enabled 3 wheel-chair-bound high-school students to secure district-wide building-modifications that brought schools in compliance with the Americans with Disabilities Act; these students had been unable to navigate their campuses, use bathrooms, or participate in academic programs physically accessible only to the able-bodied (Mitchum v. Santa Barbara School District,);

- obtained a fair housing discrimination case settlement against a predator landlord who sought out women residing at a local homeless shelter and offered rental discounts in return for sex (Project Sentinel [Cordero] v. Lal);

- secured improvement to a farm labor camp housing hundreds of asparagus pickers which had no functioning toilets or showers, a filth-laden kitchen with inadequate refrigeration, and unscreened, unsecured doorways and window openings, and recovered months of unpaid back wages for some 400 workers residing there (Ramirez v. JB Farm Labor Contractor);

- worked with HUD to secure a fair housing enforcement agreement with a rural county that made available grants and loans of up to $30,000 per family to enable thousands of farm worker families living in substandard trailer parks to move their homes or secure new homes in newly developed mobile home parks(Hernandez v. Riverside County);

- provided thousands of K-3 English-learners access to Reading First grants under *No Child Left*

Behind; and enjoined the California Department of Education from enforcing a ban that kept these funds from reaching hundreds of English-learner class rooms (Pazmino v. State Board of Education).

In describing the foregoing cases, I wanted to share with the Committee the significant work that CRLA performs in the rural areas of California. More importantly, these few examples typify the egregious and shocking situations which poor rural persons, particularly farmworkers and mostly Latino face day in, day out.

I recognize, however, that the invitation to testify before this Committee was not due to a keen interest in how a particular legal services agency discharges its responsibilities. Rather, the Committee's invitation to testify referred to allegations of violations of the regulations of the Legal Services Corporation. I want to address those issues as follows.

I have managed CRLA as its Executive Director for almost 20 of CRLA's 38 years of service.[1] During my tenure alone, CRLA has gone through five extensive Federal audits and a number of investigations. The recent OIG audit has been the longest ever, with the most extensive on-site review by an audit team--7 weeks on-site in four visits stretched over a 2-year period. Two audits in the 1980's were of 2-weeks duration each with larger teams of 10-15 members. During my tenure–and indeed since the Legal Services Corporation Act was enacted in 1974. no program review, audit nor investigation has found any instance of material non-compliance by CRLA with the Act and its implementing regulations.

Regarding that auditing history, I make two observations: First, CRLA has always realized that we will be able to provide diligent and effective advocacy on behalf of the most vulnerable rural communities only through administering efficiently and effectively all aspects of financial accounting, local office operation and staff activities. CRLA must run efficiently; otherwise, effective advocacy cannot follow. Second, we have always sought to protect the public dollar by creating internal oversight mechanisms that guarantee full compliance with Congress' and the Corporation's legal strictures. Our funds are not only public--which necessarily require protection as taxpayer money--but represent hours of daily public service, of daily *legal* service, that the poor themselves pay for with both taxes and lack of representation. CRLA fully understands that survival of national legal services today is a bipartisan responsibility that has required agreement to a *restricted* legal practice. Protection of the Federal resource *is* the most critical responsibility that a program Director assumes.

Indeed, for someone born in a rural community and raised by parents who were themselves migrant farm workers, this obligation to protect--at all costs--the Federal rural-legal-service dollar weighs heavier. CRLA institutionally, and I personally, take pride in knowing that our understanding of, and strict adherence to, the laws and regulations governing national legal services--overseeing millions of Federal funds to one of the 10 largest programs in the nation--has protected this precious rural resource for the last 30 years.

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[1]CRLA Inc. was incorporated March 3, 1966, and received its first grant from the Office of Economic Opportunity (OEO) on May 24, 1966.

In turning now to current substantive concerns, I begin by noting that CRLA has not been advised regarding the specific questions we should address before the Subcommittee. Accordingly, I take the liberty of anticipating the Subcommittee's concerns, and will initially address two matters. First is the question of CRLA's "cooperation" with LSC's Office of the Inspector General and the process of our "acceptance" of certain OIG findings and recommendations. Second, is the issues regarding the substantive findings in the two subsequent reviews by OCE and by the OIG of the relationship between CRLA and a non-LSC-funded entity, the California Rural Legal Assistance Foundation–and our compliance with the "program integrity" requirements of LSC Regulation 1610.

A. CRLA COOPERATION WITH THE OFFICE OF INSPECTOR GENERAL

Both the Committee on the Judiciary and this Subcommittee have communicated concerns to the Legal Services Corporation (hereafter, "LSC") questioning whether LSC's Office of Inspector General (hereafter, "OIG") "requests [to CRLA] for information... are met with resistance from the grantee."[2] In fact, CRLA has provided the OIG with all requested information; there were discussions regarding client rights arising from the attorney-client relationship, but those were resolved early in the audit. There are NO open issues whatsoever concerning requested information. Throughout the course of reviews by both oversight entities--LSC's Office of Compliance and Enforcement (hereafter, "OCE") and the OIG--CRLA has acted in good faith and in full cooperation

Audits occur in the midst of the dynamic of daily legal assistance and representation, and a law firm must always act fully consistent with its ethical and professional responsibilities owed its clients. The recent OIG audit presented many more issues and more requests for information than any previous audit. We cooperated fully. During the 30-month audit period that extended from June 11, 2001 through the issuance of the final report on December 11, 2003, CRLA expended significant resources responding to the OIG demands from both the on-site audit team and Washington headquarters to: retrieve, review hundreds of closed and open client files and transmit relevant documents from our 22 service-office network to our central headquarters; review and compile client and case-related data which no LSC nor professional requirements obliged us to assemble or report; produce and review financial documentation for the 2-year audited period. Although CRLA has not estimated the total resources expended for the entire audit, at least through October, 2002 (after 16 months of the 30 months of audit), CRLA had expended 4479 staff hours in audit-related work, at a cost of $113, 091.[3]

Throughout the audit, CRLA has understood that the OIG's findings are to be in the form of

[2]Letter dated November 20, 2003, to LSC Chairperson Frank Strickland, from Hon. James Sensenbrenner, Chairman, Committee on the Judiciary; and Hon. Chris Cannon, Chairman, Subcommittee on Commercial and Administrative Law, p.2. The issue of "office-sharing" was also mentioned there.

[3]These estimates were provided to both LSC and OIG by letter of October 24, 2002.

recommendations to LSC for the latter's final consideration and review. That understanding is consistent with both the Legal Services Corporation Act and the Inspector General Act. LSC's Board implements the LSC Act through adopting regulations and periodically providing other written guidance to its grantees. The OIG audits recipients' compliance with the Act, LSC's regulations and policies, under OMB and other federal standards. OIG transmits its findings and recommendations to LSC in a public report, and has done so with regard to CRLA; we understand that report has been reviewed by the Subcommittee's staff. The OIG has also requested CRLA to submit a "corrective action plan" corresponding to its recommendations.

Before describing our response to the OIG's request for the "corrective action plan", we reiterate a position we articulated earlier in our comments to the OIG: we believe the OIG's extensive review has overwhelmingly confirmed the propriety and regularity of CRLA's operations; we note that in no instance did OIG recommendations include imposition of any LSC penalty, as the OIG can–and does from time to time–recommend.

As to the OIG's request for a CRLA "corrective action plan", with respect to the majority of recommendations, CRLA either accepted the OIG view or had already eliminated or "corrected" the situation of concern before issuance of the final report. As more fully discussed below, CRLA believes some OIG recommendations are inconsistent with provisions of the LSC Act and/or LSC formal regulations and/or LSC policy guidances issued to recipients. In some instances we are left with the conclusion that OIG recommendations flatly and facially contradict provisions of the Act or LSC regulations.

CRLA formally advised the OIG on February 9 regarding both our acceptance of the majority of recommendations and of those few issues where we believe their recommendations need to be reviewed by LSC. We understand our response has been made available to the Subcommittee and reviewed by your staff. Since February 9, neither the OIG nor any other unit of LSC has responded to CRLA.

Typically, in a situation like this, the LSC Board will determine whether CRLA or the OIG is correct in its view; that process has yet to be completed. It was thus surprising for CRLA to be asked to testify about issues that have yet to be finally determined. While normally CRLA would prefer to have that process before the LSC Board concluded, being respectful of the Committee's invitation to testify, we provide detailed information below on the outstanding issues.

II. REVIEW OF THE TWO 1610 AUDITS

Background.

The OIG audit is the second of two 1610 audits conducted by the Federal government over the

last 3 ½ years. It is our understanding that both audits were initiated by complaints to members of Congress from the Western United Dairymen (WUD), a trade association in California whose mission is to look after the "general welfare and longevity of dairy producers." Both audits asked whether Federal funds were being provided to the California Rural Legal Assistance Foundation[4] to, ostensibly, fund the Center on Race, Poverty and the Environment (CRPE). The second was more succinct: "whether CRLA and interrelated agencies CRPE and CRLAF have engaged in restricted activities with federal monies".

While I describe below in detail each of the audits, it is important to note at the outset the most telling result of these audits after the significant amount of Federal and recipient resources spent. Neither report mentions a word of the Center on Race Poverty and the Environment, the alleged relationship driving both reviews.

A. 2000 AUDIT REQUESTED OF THE LEGAL SERVICES CORPORATION .

The first audit was requested on September 11, 2000, by Congressman William Thomas (R-Bakersfield) and was requested of LSC's Office of Compliance and Enforcement (OCE) (hereafter "the LSC audit"). That audit was undertaken over4-days by LSC's OCE on October 30-November 2, 2000. Findings were issued December 18, 2000, in the name of then LSC President John McKay. For all practical purposes, LSC exonerated CRLA regarding compliance with the 1610 regulation.

> **"A review of the totality of circumstances (the threshold of our review) has demonstrated that CRLA did not act in violation of the applicable restrictions and that CRLA maintained program integrity with the Foundation."**

B. 2001 AUDIT REQUESTED OF THE OFFICE of INSPECTOR GENERAL

The second audit requested by Congressman Calvin Dooley (D-Fresno) went to LSC's Office of Inspector General (OIG). The OIG's review began with notice to CRLA on June 11, 2001, and extended 30 months, ending with the December 11 report. The OIG process included: on-site fieldwork involving four separate audit-team field visits totaling nearly seven weeks; production of hundreds of case files; CRLA's transmission to Washington of thousands of pages of case and advocacy materials plus hundreds of pages of specially-prepared legal memoranda between and after visits and literally thousands of hours of CRLA staff time in responding to OIG's document and other information requests.

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[4]Since 1982, the relationship between CRLA Inc. and CRLAF has been reviewed during 5 Federal audits-- in 1986, 1988, 1991, 2000 and 2002.

1. GENERAL FINDINGS
REGARDING AUDIT OF CRLA

Despite the extensive review of hundreds of case files, hundreds of financial transactions, numerous staff interviews and weeks of on-site field office visits, no financial irregularities, no violation of LSC rules were found that required any form of penalty nor any form of formal Federal intervention. The OIG found that CRLA Inc. and California Rural Legal Assistance Foundation were independent entities. It found that there were no improper fund transfers between the two. After extensive and intensive review of CRLA 17200 litigation--- complex cases that, in large part, are brought to recover hundreds of thousands of dollars of unpaid wages--- the OIG found this to be a proper use of resources. Nevertheless, the OIG did make findings in the audit that raised questions regarding 1610.

The application of 1610 involves the examination of 5 broad criteria to determine the existence of "program integrity". Those are" (1) legally separate entity (2) transfer of program funds (3) subsidies (4) physical and financial separation and 5) certification of program integrity. After a 2-year examination, issues arose regarding two criteria. A summary of those findings were:

(1) **Legally separate entity**— CRLA and the Foundation are separate legal entities and have been separate for 24 years (since 1981). There are no overlapping board members. They have separate executive and deputy directors. They are headquartered in cities 90 miles apart.

(2) **Transfer of program funds**— CRLA transferred no LSC funds to the Foundation.

(3) **Subsidies** - The OIG determined that CRLA had failed to charge late rents, i.e., an *indirect* subsidy for not charging interest for late rent all of which was collected. The total involved in and interest on late rent payments was $511.00. CRLA's policy was uniform for all tenants. No favoritism was found regarding any tenant. CRLA sublets space to reduce rent or mortgage obligations. The $511.00 was collected. *Given that the OIG's period of review was 2-years of operation, amounting to nearly $18 million of expended funds, the indirect subsidy appears of immaterial value.*

CRLA's experience indicates that the issue of *subsidy* has been treated inconsistently by OIG and LSC. In its December 2000 report, LSC found an "indirect subsidy, which was the equivalent of a short-term, interest free loan". It treated the matter in a manner consistent with a lack of materiality. LSC stated that:

> **"... CRLA and the Foundation have entered into a number of agreements for the benefit of each party, and that these agreements are at fair market value. Nonetheless, there were minor lapses in CRLA billing."**

On the other hand, without explanation, the OIG report of December 11, treated the exact same "indirect subsidy" with more seriousness, by using it as one of 4 key factors that lead to the 1610 violation. The OIG stated that

> **"...The grantee subsidized the Foundation by routinely allowing late payment of rent over a long period of time. Between June 2001 and May 2002 the Foundation seldom paid its rent for three offices on time."**

It concluded that

> **"[b]y allowing the interest free use of these funds the grantee subsidized the Foundation activities."**

Respectfully, presence or absence of minor penalties for late rental payments is no ground for a finding of any material violation of the law.

(4) **Physical and financial separation**— This criterion has 3 aspects: financial separation, shared space, and shared staffing.

- *Financial accounting* for the two organizations was found to be entirely separate.

- Regarding *physical separation*, CRLA was found to have complied with the articulated LSC criteria regarding "physical separation" — separate signage, market value rent, separate entry, separate institutional identification. In one instance, the OIG questioned the fact that both tenants could access a shared lunchroom and concluded it was impermissible. But that situation, even if shared access to a lunchroom can be said to be a problem, has been rendered moot because the rental space is no longer shared.

- *Shared staff arrangements* are a separate sub-criteria examined in the audit. CRLA has separate time keeping from all other organizations it works with. LSC's guidelines suggest that recipients that are as large as CRLA, should not allow more than 10 % of advocacy staff to be shared with an organization that undertakes restricted activities, and that doing so will call into question the organizations' separation.[5] Under the guideline, CRLA could have had up to 8 such shared employees before it would be questioned. During the period at issue, CRLA had 1 attorney and 1 paralegal--- only 2%. Nonetheless, ignoring the established LSC guideline, the OIG questioned the involvement of the 1 attorney and 1 *volunteer* attorney.

(5) **Certification of program integrity**— Recipients are required to file a Board-approved annual

[5] This guideline is found in *GUIDANCE IN APPLYING THE PROGRAM INTEGRITY STANDARDS*, attachment to LSC Memorandum to All LSC Program Directors, Board Chairs re "Certification of Program Integrity", October 30, 1997, from John A. Tull, Director, Office of Program Operations.

certification of 1610 compliance. CRLA has filed these in all years required, to the present.

2. CO-COUNSELING: A NON-1610 CRITERION

We begin by noting that co-counseling of litigation does not appear as a 1610 factor under the statute, regulations or LSC guidance; the OIG's extensive evaluation of this practice has inserted a new program integrity factor of which neither CRLA nor other recipients had any prior notice. The *Compliance Supplement For Audits of LSC Recipients (December 1998)* used by LSC, the OIG and Independent recipient auditors for auditing programs does not identify co-counseling as a factor for assessing 1610 compliance. Recipients use this manual in preparing for LSC and OIG reviews. Nonetheless both LSC and the OIG have analyzed co-counseling in assessing compliance with 1610.

Co-counseling is, of course, common in litigation and other types of legal practice, and is consistent with the Act and Regulations. CRLA undertakes co-counseling to satisfy our obligation under LSC Regulations to expend 12 ½ % of our annualized basic field award to involve private attorneys in delivery of legal services. ("Private Attorney Involvement" or "PAI", 45 C.F.R., § 1614.) CRLA attempts to secure "private", *i.e.*, non-LSC-funded, attorneys to co-counsel with our staff attorneys in significant litigation, but in rural California this is one of the very few effective ways that programs both leverage such resources and meet the LSC obligation..

CRLA engages in extensive co-counseling with non-LSC-funded attorneys and law firms in order to: (1) satisfy our obligation under LSC Regulations to expend 12 ½ % of our annualized basic field award to involve private attorneys; (2) obtain the benefit of experienced litigators who can enable a local office staffed by limited-experience staff to undertake representation that we could not otherwise provide; (3) obtain added staffing and physical resources to pursue litigation for which we would not otherwise have sufficient professional and support personnel to undertake; (4) acquaint and train members of the private bar in specialized areas of poverty law with the goal of expanding the availability of private-bar representation to low-income clients including the vast number of non-LSC-eligible poor people in rural California.

CRLA implements litigation co-counseling arrangements through written co-counseling agreements, generally based upon a 9-page "model" agreement that is tailored in individual cases as appropriate to the particular circumstances of the case and/or the needs and resources of outside counsel. Upon request, we identified agreements in 42 separate cases including six in which the Foundation co-counseled, and made forty-one agreements available for review. In these 42 cases (including some cases in which we co-counseled with more than one firm), CRLA co-counseled with at least 26 different law firms one of which was the Foundation.[6] We co-counseled on more than one case with at least 9 of these firms.

[6]These firms included both traditional, for-profit, private law offices and other non-profit entities that provide legal representation.

CRLA implements and monitors our co-counseling relationships through a series of rigorous review steps including collective review and approval of detailed Litigation Assessment Plans and draft complaints by the four Directors of Litigation, Advocacy and Training in conjunction with the Deputy Director; through review and approval of detailed, lengthy written co-counseling agreements, and through similar collective review of semi-annual written reports submitted by advocacy staff for all significant advocacy including co-counseled litigation.

CRLA does not differentiate among firms with whom we co-counsel in our pursuit of the above-described goals, practices and compliance with professional responsibility and LSC requirements. We maintain these goals, practices and compliance equally with the Foundation as with all other co-counsel.

The OIG recommended that CRLA staff any cases co-counseled with the Foundation only with its most junior attorneys. Co-counseled cases are generally the largest and most difficult litigation with the most complex issues both substantively and procedurally. The Inspector General's recommendations that only junior counsel participate in cases with the Foundation are completely counter-intuitive to his concern that this co-counseling results in loss of objective integrity and independence. Independence and CRLA institutional integrity are far more likely to be maintained by senior counsel who are sufficiently experienced in litigation and administration to confidently exercise the independent judgment that an inexperienced advocate simply has not acquired.

CRLA informed the OIG in its Response of February 9, 2004 that it would strengthen certain aspects of its personnel policy, and would otherwise comply with Parts 1610 (and 1604 and 1635) through adherence to a number of policies to be incorporated into its CASE HANDLING AND OFFICE PROCEDURES MANUAL and/or our PERSONNEL MANUAL and/or our OPERATIONS MANUAL, as appropriate, and authorized as appropriate by Board actions.

3. MISINTERPRETATION OF LSC REGULATION 1636: CLIENT IDENTITY

The OIG's Final Report directs CRLA to turn over to the employer, landlord or other defendant in a lawsuit of this kind the names of *every* individual who may have consulted with CRLA about their rights--even those who have *not* authorized CRLA to bring lawsuits and who are *not* plaintiffs in a pending or contemplated action, and even though revealing the identities of these *non-plaintiff* employees or tenants who considered and rejected the pursuit of formal legal remedies regarding their employment or housing is very likely to jeopardize that employment or housing, and to profoundly deter potential clients from consulting a lawyer to determine if they have been treated illegally in the future. The Inspector General's position would effectively penalize the consultation with legal services attorneys that the Legal Services Corporation Act and implementing regulations are supposed to guarantee.

The OIG's position is inconsistent with LSC's regulations in Part 1636, and contrary to the professional responsibilities that CRLA attorneys owe their clients and potential clients under state and federal law. Part 1636 requires CRLA to identify to adversaries and obtain written factual statements from plaintiffs that we represent in all litigation (including that brought under California's Business & Professions Code Sections 17200 *et seq*.). CRLA has complied fully with those requirements. Our compliance is implemented through formal policy incorporated in our CASE HANDLING MANUAL and through specific confirmation in each Litigation Assessment Plan reviewed jointly by our Directors of Litigation, Advocacy and Training (as described previously, p. 8).

The OIG found no instance in which CRLA had failed to comply with these requirements. Instead, the Final Report directed CRLA to implement procedures by which it would obtain statements of fact from and identify to adversaries' clients who have consulted with CRLA attorneys but who have refused to become plaintiffs in litigation. The OIG's position is inconsistent with Part 1636 and would require CRLA attorneys to violate their own professional obligations under governing law. Part 1636 is not ambiguous. Sub-part 1636.1 provides in relevant part that,

> **[t]he purpose of this rule is to ensure that, when an LSC recipient files a complaint in a court of law or otherwise . . . the recipient identifies the *plaintiff* it represents to the defendant and ensures that the *plaintiff* has a colorable claim.**

Sub-part 1636.2(a) further provides,

> **When a recipient files a complaint in a court of law or otherwise . . . participates in litigation against a defendant . . . on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:**
>
> > **Identify each *plaintiff* it represents by name in any complaint it files . . . . ; and**
> >
> > **Prepare a dated written statement signed by each *plaintiff* it represents, enumerating the particular facts . . .** (Emphases added)[7]

[7]The dictionary definition of a "plaintiff" is, unsurprisingly, consistent with the assumption underlying these regulations: "A person who brings an action; the party who complains or sues in a civil action and is so named on the record . . ." (BLACK'S LAW DITIONARY (5th ed., 1979); "1. one who commences a personal action or lawsuit to obtain a remedy for an injury to his rights . . . 2. the complaining party in any litigation . . ." (WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1986).)

Eligible persons often enter into attorney-client relationships with CRLA for assistance in investigating and evaluating their potential rights or liabilities *vis a vis* an opposing interest, or for advice and counseling in dealing with an opposing interest by means other than litigation. Many such persons never authorize CRLA to file suit on their behalf, often because they have no desire to have their concerns publicly revealed for fear of retribution. Absent publicly filed litigation in which they are parties, their desire for privacy is recognized and respected by federal and state law. As just described, Part 1636 limits recipients' obligations to identify clients to their adversaries to the circumstances when those clients have specifically authorized the recipient to name them as plaintiffs in pending or anticipated litigation, but not when those clients are only counseled rather than named as parties to litigation.

The American Bar Association's Model Rules of Professional and LSC's own rules that require recipients' attorneys to adhere to their professional duties in serving their clients and potential clients, support CRLA's position. The Statement of Findings in the LSC Act indicates that,

> **attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession.**

(42 U.S.C., § 2996, subd. (6) .) In furtherance of this mandate, Congress expressly required that the Legal Services Corporation

> **shall not . . . interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association . . . or abrogate as to attorneys in programs assisted under this subchapter the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction.**

For these reasons, CRLA expects that upon review of this position regarding 45 CFR1636 and the applicable professional rules, LSC will accept CRLA's position.

III. INVESTIGATION REQUESTED BY CONGRESSMAN JOHN DOOLITTLE : 45 CFR 1617

On January 7, 2004, Congressman John Doolittle (R-CA) filed a complaint with the Office of Inspector General on behalf of former California state legislator Dean Andal. He charged that CRLA had violated "prohibitions against desegregation and class action lawsuits". The OIG audited CRLA for 4 days, January 20-23. On March 12, 2004, the OIG issued its findings which contend that although it was permissible for CRLA to have continued working on the case *Hernandez v. Stockton Unified* since 1977, CRLA violated the 1996 prohibition against participation in class actions because it had

engaged in negotiations with the Stockton Unified School District (at its request) to bring the case to closure.

The Inspector General correctly notes that in 1977, LSC's Office of the General Counsel approved continued CRLA representation of the plaintiff class. (LSC letter dated May 31, 1977, from Alice Daniel, General Counsel, to Hon. M. Caldwell Butler, U.S. House of Representatives.). That letter recognized, in part, that CRLA's participation was to negotiate stating: "Negotiations with respect to the court's findings and conclusions of law are now in progress".

The *Hernandez* litigation was filed in 1970 and resulted in a judgment in 1974 finding the district guilty of *de jure* segregation of Latino and African American students. The court granted a traditional desegregation remedy to the petitioner parents, including busing and an implementation plan approved in 1977 that established phased integration in District schools. In 1991 the judgment was amended by further order to eliminate busing and substitute remedial funding for those schools in poor neighborhoods that had earlier suffered the imposition of segregation. All this activity preceded Congress' 1996 adoption of the class-action prohibition; all was appropriate LSC-funded activity, and indeed, constituted recipient's Private Attorney Involvement activity through co-counseling.

In 2002, the District approached CRLA and petitioners requesting that CRLA and co-counsel facilitate final resolution of the case. CRLA's *presence* during the 2002-2003 meetings between the defendant District and petitioner's counsel was requested by the District and expected by the court which had overseen this case for years. The parties assumed that a negotiated agreement was far more efficient and less costly than litigating the issue before the court which would be more time consuming. Agreement was reached in early 2003 providing for the termination of the consent decree (because its purpose had been met) and a 2-year transition thereafter during which the schools that had received state desegregation funds would receive a reduced percentage of those funds until they would be split evenly with low-achieving schools or as the district otherwise saw fit. CRLA's role in these meetings and negotiations subsequent to the 1996 class-action prohibition did not represent either a new case nor new intervention in an existing case but rather undertaking our ethical duties to existing clients arising from the long-standing, still-open lawsuit.

CRLA's role during those meetings and negotiations was beneficial to the parties' abilities to resolve and finally settle this three-plus-decades old litigation, and thus was in the public's interest and in the interest of its client community. Although reasonable minds could differ, CRLA understood that its presence during the negotiations did not constitute participation in "adversarial proceedings" as that term is used in the statute and regulations. CRLA went on record with the court and the opposing party about the nature of the prohibition,[8] and neither was concerned that CRLA was acting outside the scope

[8]In a February 24, 2003 letter to the District's counsel prepared before the present OIG investigation, we confirmed that CRLA was making no claim for past or present attorney fees or costs and reiterated that although we had at one time been counsel, Mr. Roos "of META is the sole counsel for the Petitioners and has full authority to settle the case . . . or otherwise represent the Petitioners." Shortly thereafter, still prior to the present investigation, Mr. Roos submitted a declaration executed March 3, 2003, to the court also asserting

of permitted activity. The client community was similarly informed.

SUMMARY

- But for the district court's request that CRLA assist in bringing the case to closure, the case would have continued as a virtually "inactive" case under the existing consent decree; the current class action regulation allows recipients to "remain informed about, or to explain, clarify, educate or advise others about the terms of an order granting relief".

- CRLA, petitioners, defendants and the Court expressed the belief that the presence of CRLA, who had been counsel in the case since its inception in 1970, would be beneficial to putting to bed this over-3-decades-old case. The availability of CRLA's knowledge served their–and the public's–interests. In sum, CRLA believes that its role in the proceedings at issue was not "adversarial" and was desired by the parties and the court, benefited the public interest in enabling the parties and the court to finally resolve lengthy litigation, and was undertaken in the good-faith belief that we were complying with the spirit and language of the class-action and desegregation prohibition.

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that he was "the sole attorney of record, as CRLA is barred by federal law from participating in class actions . . ."

- The court dismissed the primary case on June 18, 2003, at which time CRLA ceased to be a part of the case in any capacity. [9] CRLA closed its case file in the *Hernandez* matter effective December 31, 2003.

- CRLA filed its withdrawal with the Stockton Superior Court for the County of San Joaquin on March 26, 2004.

CONCLUSION

CRLA has been privileged for some 38 years to provide the rural poor of California with full access to the state's civil courts and, thereby, to provide some semblance of justice to those not accustomed to such civil representation. This is what CRLA believes to be the simple mission of the Legal Services Corporation Act of 1974. In meeting this purpose, CRLA has carefully and rigorously adhered to the law, regulations and guidelines set by Congress and LSC. CRLA will continue to do so.

[9] The case was appealed by a group of intervenors who seek to deny the court the 2-year transitional jurisdiction the court sought to maintain by its June, 2003, order. CRLA is no longer receiving any judicial or party notices or any other notices related to the appeal.